IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1371 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANK OF BARODA

Versus

KALIANDAS VARJIVANDAS SHAH

Appearance:

1. First Appeal No. 1371 of 1985

MR RM DESAI for Petitioner No. 1

..... for Respondent No. 1

MR YATIN SONI for Respondent No. 1/6-1/5

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 20/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

The appellant-Bank of Baroda, by this appeal, has been challenging a money decree of Rs.96,421/- with 6 percent interest and the cost of the suit passed in Civil Suit No.1322/1980 by the City Civil Court, Ahmedabad.

2. Facts giving rise to the filing of the present appeal shortly stated are;

That plaintiff Mr.K.V.Shah (since deceased) was serving with the Bank of Baroda (hereinafter referred to as the "Bank") as a Junior Grade Officer since 1949. That the bank was nationalized in the year 1969 and the entire staff of the bank continued their service under The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969. That the bank framed rules for its Officers known as the "the Bank of Baroda Officers Service Rules" (hereafter referred to as the "Rules") applicable to the Officers of the bank. That in the year 1971, the plaintiff came to be suspended and chargesheeted and sixteen criminal cases came to be filed against him before the Metropolitan Magistrate Court, Ahmedabad. That in all cases except one, the plaintiff was acquitted whereas the one case was kept on sine die file of the Court. The charges levelled against the plaintiff were for the offences under Sections 420, 407 and 477(A) of the Indian Penal Code. That the plaintiff was thereafter dealt with departmentally and departmental inquiry was conducted against him. That in the departmental proceedings, the plaintiff was found guilty and the Inquiry Officer recommended dismissal of the plaintiff from the service of the bank without notice. The disciplinary authority vide order dated 18/12/1975 passed an order discharging the plaintiff from the service of the bank with effect from 27/12/1975. It is the say of the plaintiff that neither the Inquiry Officer/disciplinary authority nor the management of the bank took any decision against the plaintiff under the provisions of Rule 8.4 of the Rules. The plaintiff, therefore, called upon the defendant bank to pay up the difference between the subsistence allowance and the actual salary during the period of suspension i.e. from the date of suspension till the date of the discharge of the plaintiff from the service of the defendant bank.

3. The defendant bank filed written statement vide ex.18 and refuted the claim of the plaintiff. The trial court framed issues and considering the evidence adduced by the plaintiff and the defendant and also the provisions of Rule 8.4, partly decreed the suit requiring the defendant to pay Rs.96,421/- with 6 percent interest from the date of the suit till the realization of the

amount. It is this decree which is assailed in the present appeal by the appellant bank.

4. It is not in dispute that the plaintiff was an employee of the defendant bank; than he came to be suspended from service on 16/06/1971 and was prosecuted for the offences under Sections 420, 407 and 477(A) of the Indian Penal Code. As per the say of the plaintiff, as many as sixteen different criminal cases came to be filed against him. One case was kept on the sine die file of the Court, whereas in the other cases, he came to be acquitted. The plaintiff then was dealt with departmentally and the Inquiry Officer found him guilty of misconduct and recommended the penalty of dismissal from service. It is also not in dispute that the disciplinary authority passed an order on 18/12/1975 discharging the plaintiff from the service of the bank with effect from the close of office hours on 27/12/1975.

5. It is also not in dispute that the bank did not take any decision nor passed any order pursuant to the provisions contained in Rule 8.4 of the Rules.

The trial court has, in the judgment, reproduced Rule 8.4 which reads as under;

> "Pending investigation/inquiry into the conduct of an Officer, he may be suspended from service.
>
> During the period of such suspension, an officer would be paid subsistence allowance on the following scales:
>
> A....
> B....
> If on the conclusion of the inquiry it is declared to take no action against the Officer concerned he shall be deemed to be on duty and shall be entitled to full salary and allowances for the period of suspension. If a punishment other than dismissal is inflicted, the whole or a part of the period of suspension may at the discretion of the management, be treated as on duty with the right to a corresponding period of the salary and allowances."

6. It is the discretion with the bank to pass an order under the above reproduced Rule 8.4 as regards the whole or the part of the period of suspension treating the plaintiff as on duty with the right to corresponding period of salary and allowances. The bank has not passed

any order either treating the plaintiff as on duty for the whole or part of the suspension period as on duty. Thus the bank has preferred not to take any decision as regards the salary and allowances of the plaintiff during the period of suspension. Since the bank did not take any decision as regards the salary and allowances of the plaintiff during the period of suspension, the plaintiff has come forward with a suit praying for the difference amount between the subsistence allowance and the actual salary for the period from 16/06/1971 till the date of discharge.

7. It is not in dispute that the respondent-original plaintiff (since deceased) was charge-sheeted for misconduct and was dealt with departmentally and was found guilty of the charges levelled against him and was visited with penalty of discharge from service. It is submitted by Mr Yatin Soni, learned Advocate for the respondent that under rule 8.4 of the Rules, in cases other than the case wherein penalty of dismissal from service is inflicted, it is obligatory on the part of the appellant-bank to pass an order as regards the salary of the employee concerned during the period of suspension. It is further submitted that in the instant case, the penalty inflicted is that of discharge from service and under rule 8.4, some order ought to have been passed by the appellant bank as regards the salary during the period of suspension.

8. Rule 8.3 provides for following penalties:

(a) dismissal without notice,
(b) discharge with or without notice,
(c) reduced to a lower post or a grade,
(d) stoppage of increment with effect of postponement of future increments,
(d) warning
(e) censure and
(f) adverse remark against the employee.

It may be seen that rule 8.4. is general, inasmuch as it would apply to the penalty other than dismissal from service.

8.1. It may be realised that rule 8.4 gives a discretion to the bank to treat either whole of the suspension period or part of it as on duty and such discretion would be required to be exercised in cases where penalty is other than dismissal from service.

9. In cases where penalty imposed is minor, namely;

warning, censure, adverse remarks in the service record, stoppage of increment or reduction to a lower grade or post would certainly require the bank to pass an order as to how the period of suspension should be treated viz; an employee visited with such penalty should be treated as on duty either for whole of the suspension period or part of it depending upon the facts of the case and the penalty imposed. In the instant case, the employee has been found guilty of the charges which are serious in nature levelled against him in the departmental proceedings and consequently came to be discharged from service. It may also be noted that the order of discharge from service came to be passed when the superannuation of the plaintiff was only four days away. Probably considering the superannuation, the management may have imposed the penalty of discharge from service rather than imposing penalty of dismissal from service. In both the cases, the effect is that an employee would cease to be in the employment of the bank and the suspension would be justified in view of the major penalty imposed. The question of paying the difference between the subsistence allowance and the salary during the period of suspension would arise only if the suspension is found not justified. In the instant case, the imposition of penalty of discharge from service justifies the suspension and, therefore, there is no question of any payment of salary to the plaintiff for the period of suspension.

10. Looking to the language employed in Rule 8.4. reproduced above, it may also be seen that the discretion would be required to be exercised if the whole or part of the suspension period is to be treated as on duty and if the whole or part of the period of suspension is not to be treated as on duty, then the question of exercising discretion would not arise. Thus, non-passing of order as regards the salary of the plaintiff would mean that the defendant bank has not exercised discretion treating either the whole or part of the suspension period as on duty and, therefore, in the instant case, there is no need to pass any order under Rule 8.4. Such exercise of discretion is necessary only if whole or part of the suspension period is to be treated as on duty. For this reason, we are unable to agree with the submissions advanced by Mr Yatin Soni, for the respondent that at least some part of the period of suspension should be treated as on duty because Rule 8.4. does not envisage a situation whereby the bank would be obliged to consider even part of period of suspension as on duty where the suspension is found justified and the employee is no more in service by imposition of penalty of discharge from

service.

11. In the impugned judgment, the trial court, relying upon rule 10.4 of the rules. has awarded an amount of six months' salary. In our opinion, rule 10.4 cannot be invoked in the present case since the said rule would apply to an employee who has completed 25 years of service in the bank and who has superannuates on reaching the age of retirement or an employee who retires on resignation or retirement on resignation of an Officer on account of his ill-health subject to the bank's satisfaction or in the event of death of an employee who has completed 25 years of service prior to his death. In the instant case, the plaintiff has neither superannuated nor retired on reaching the age of retirement nor retired or resigned on account of his ill-health. Thus, none of the clauses of rule 10.4 applies in the present case as the plaintiff was discharged from service which situation is not envisaged in rule 10.4. Mr Soni, has fairly conceded to this position and stated that Rule 10.4 cannot be invoked and the relief on the basis of rule 10.4 cannot be legally granted.

12. Coming to the question of limitation, it may be seen that the Inquiry Officer/disciplinary authority passed final order on 18.12.1975. The said order reads as under:

> "I hereby finally order that "Shri K V Shah may be discharged from the service of the bank with effect from the close of office hours on 27th December, 1975."

Thus, the plaintiff stood discharged from the service of the Bank after the office hours of 27.12.1975. The present suit has been filed on 25.4.1980. It is submitted by Mr Soni, that as the defendant bank rejected the claim of the plaintiff vide communication dated 24/28.4.1979 in reply to the plaintiff's demand of 27.9.1978, the cause of action for filing the suit would accrue on that date and the suit has been filed within three years of the defendant denying the claim of the plaintiff for the first time on 24.4.1979.

13. We are unable to agree with the submission of Mr Soni for the simple reason that the right, if any, to claim difference between the subsistence allowance and the salary, would accrue not on the the defendant denying the claim. The right to claim difference would accrue on 27.12.1975. His right would not be dependent on the defendant denying/rejecting the claim. Simply because

the plaintiff chose to serve notice of demand on 27.9.1978 and the defendant denied the claim vide reply dated 24.4.1979, that cannot be the accrual of cause of action for the purpose of filing the suit. It may so happen that the plaintiff may demand after a period of limitation say after five or 10 years and the defendant denying the same after one year. Then, the period of limitation would not be extended as and when the party choose to raise the demand and the rejection of the same by other side. Suffice it to say that the suit is not filed within the period of limitation i.e. within three years of accrual of cause of action and the suit ought to have been filed within three years from 27.12.1975 and therefore, the suit filed on 25.4.1980, being beyond the period of limitation is barred by limitation.

14. Rules 8.4 and and 10.4, as interpreted above, and the suit being barred by limitation would require the interference with the impugned judgment and decree passed by the trial court as the view taken by the learned trial Judge cannot be subscribed to and, therefore, the impugned judgment and decree is liable to be set aside.

15. It is suggested from the record that pursuant to the impugned decree, the appellant-bank deposited the decretal amount and the said amount was directed to be invested in F.D. with Bank of India, Ashram Road Branch, Ahmedabad. It is further suggested that the periodical interest accruing on the F.D., amount was permitted to be withdrawn by the widow of the deceased plaintiff i.e. the present respondent no.1. It is further suggested from the record that out of the amount deposited by the appellant, Rupees Twenty five thousand was permitted to be withdrawn as respondent no.1 was aged 79 years then and for the medical treatment required by her.

16. Since we are inclined to allow this appeal and quash and set aside the impugned judgment and decree, ordinarily the appellant-bank would be entitled to the amount invested in the F.D. as well as the amount withdrawn by respondent no.1. Since the withdrawal of Rupees Twenty five thousand was permitted for the reason of medical treatment of respondent no.1-widow of deceased plaintiff, also having regard to her advanced age, we hope that the appellant-bank will not insist for the recovery of the amount withdrawn by respondent no.1-the widow of the deceased plaintiff and shall remain contented with the withdrawal of the amount which is now lying in the F.D.

17. In the result, the appeal is allowed. The impugned judgment and decree passed in Civil Suit No.1332 of 1980 by the City Civil Court, Ahmedabad, are hereby quashed and set aside with the observations in the preceding paragraph as regards the amount deposited by the appellant-bank and the part withdrawal therefrom by respondent no.1. No order as to costs.

[N G Nandi, J.]

[D P Buch, J.]

msp